EDITORIALS

Ubiquitous Bugs and Our Privacy

When security men dug some 40 tiny microphones out of the walls of the American Embassy in Moscow recently, they were dismayed to find that their highly sophisticated antibugging procedures had for about 12 years been overlooking what amounted to little more than "an old system of crystal sets." Disdain was tempered by the fact that the "crystal sets" apparently worked; but fantastic progress in the dark art of eavesdropping had long since rendered them obsolescent. With laser beam experiments and microcircuitry and parabolic mikes, we do it even better now and so, presumably, do the Russians.

For that matter, so do the corporate snoopers, the business spies, the blackmailers, the private detectives looking for divorce case evidence, the police trying to snag a criminal. Technology has made the job of prying into other people's business easy far beyond the comprehension of old Sir William Blackstone, who in his monumental *Commentaries* on English law wrote flatly: "Eaves-droppers, or such as listen under walls or windows or the eaves of a house, to hearken after discourse . . . are a common nusance. . . ." The technology has also forced us right up to the lip of a legal cliff.

The New York City Bar Association has just completed a three-day conference intended to assess the impact on our society of such gadgets as:

▸ A television camera, only eight inches long and an inch in diameter, which can be hidden in an air duct or light fixture.

▸ A radio transmitter, including battery and microphone, which is no bigger than a cigaret lighter and can send a signal up to half a mile.

▸ A contact bug, little larger than a postage stamp, which can be clapped up against a door to hear what is going on inside the room.

Such devices and many more are widely available and their use plainly places in jeopardy our traditional notions of privacy. Although the Fourth Amendment specifically defends the right "to be secure . . . against unreasonable searches and seizures," effective laws to back it up are notoriously lacking, largely because the men who framed that amendment were no more able than Blackstone to envision the marvels of electronics, nor could they conceive of a society where any agency other than the state itself would be capable of or interested in conducting "unreasonable searches."

What is clearly required are some new laws, but as Oscar M. Ruebhausen, chairman of the Bar Association study committee, says, "You can't adopt the 'take-a-law-Miss-Jones' approach." Present state laws (the federal law is a useless antique) apply chiefly to wiretapping, and the existing legal situation has been described by Attorney General Robert Kennedy in requesting new legislation as "chaotic; the right to privacy is not being protected and law enforcement agencies are being hampered unduly." Yet wiretapping—and the more elegant bugs—are a fraction of the total problem. Much more basic is the question of what constitutes privacy and its violations, and so far this too has been left mostly up to policemen on the one hand and scare-artists on the other.

Away back in 1902, Judge Denis O'Brien of New York observed that "It is quite impossible to define with anything like precision what the right of privacy is or what its limitations are, if any; how or when the right is invaded or infringed, or what remedy can be applied, if any." The Bar Association group, 62 years later, deserves our thanks for bravely trying to do something about the good judge's complaint.